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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/776,498	02/05/2001	John Michael Jensen	8025P001	9282
8791 7590 03/05/2009 BLAKELY SOKOLOFF TAYLOR & ZAFMAN LLP 1279 OAKMEAD PARKWAY SUNNYVALE, CA 94085-4040				
EXAMINER				
VIG, NARESH				
ART UNIT		PAPER NUMBER		
3629				
MAIL DATE		DELIVERY MODE		
03/05/2009		PAPER		

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

# Office Action Summary

**Application No.**

09/776,498

**Applicant(s)**

JENSEN, JOHN MICHAEL

**Examiner**

NARESH VIG

**Art Unit**

3629

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 10 December 2008.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 21-46 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 21-46 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date: \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date: \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_

### **DETAILED ACTION**

This is in reference to communication received 05 February 2007. Cancellation of all previously pending claims and addition of new claims 21 – 46 is acknowledged.

### **Declaration Under 37 C.F.R. 1.131**

The Declaration Under 37 CFR 1.131 filed 10 December 2008 to overcome the rejection of claims 21 – 46 based on John Cook newspaper article "Well-Funded Xpertsite.com Making Hay With Its Popular Answer Service" in view of archived web pages of Keen.com. On page 2 of the declaration, Applicant has stated that the invention was conceived prior to 20 April 2000, and provided exhibits 1 – 9. Applicant also stated that Between 20 April 2000 and 09 August 2000, researched best manner of implementing and describing the invention, and on 09 August 2000, applicant wrote the "Patent Method" which is presented as Exhibits 10 - 11. The statement and exhibits provided by the applicant does not demonstrate that the concept of the limitations in the claimed invention

- contact information of the receiver is hidden from the communication device
- identification information of the user is tracked from the receiver.

were conceived prior to 20 April 2000.

In view of the foregoing, when all of the evidence is considered, the totality of the rebuttal evidence of nonobviousness fails to outweigh the evidence of obviousness.

***Response to Arguments***

In response to applicant's argument that receiver information is the contact information an email address. Applicant's arguments and concerns for amended claims have been responded to in response to the pending amended claims in view of the applicant's clarification that the contact information is an email address.

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 21 – 46 are rejected under 35 U.S.C. 103(a) as being unpatentable over John Cook newspaper article "Well-Funded Xpertsite.com Making Hay With Its Popular Answer Service" hereinafter known as Cook in view of previously cited archived web pages of Keen.com hereinafter known as Keen.

Regarding Claims 21, 31 and 39, as best understood by examiner, Cook teaches system and method for connecting a communication device with an intermediary facility (Xpertsite.com). Cook does not explicitly teach selecting a receiver to receive text.

However, Cook teaches Keen.com as one on the competitors of Xpertsite.com. Keen teaches idea of selecting a receiver to receive text;

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify Cook as taught by Keen to allow the user to select a consultant of their choice, apply a known technique to a known device (method, or product) ready for improvement to yield predictable results.

Cook in view of Keen teaches concept for:

transferring a fee from a user [Keen, page 12];

transmitting the text from the communication device to the receiver through the intermediary facility (Keen teaches the concept wherein the phone number, email information of the users are hidden) [Keen, page 10, 14]

wherein text is transmitted from the communication device by a user to a receiver through the intermediary facility for a fee paid by the user [Keen, page 10, 11], and the contact information of the receiver is hidden from the communication device [Keen, page 10], and identification information of the user is tracked for a return communication from the receiver (Keen.com will notify you when the member you wish to speak with becomes available) [Keen, page 11].

Regarding Claims 22, Cook in view of Keen teaches concept wherein the intermediary facility is a server.

Regarding Claims 23, 33 and 41, Cook in view of Keen teaches concept wherein the text is transmitted as an electronic mail (e-mail) message [Keen, page 14].

Regarding Claims 24, 34 and 42, Cook in view of Keen teaches concept wherein the receiver can be a publicly known person.

Regarding Claims 25, 35 and 43, Cook in view of Keen teaches concept wherein the contact information can be an account.

Regarding Claims 26, 36 and 44, Cook in view of Keen teaches concept wherein the receiver receives a benefit by receiving the text and the benefit is personal benefit.

Regarding Claims 27 and 37, Cook in view of Keen teaches concept wherein the text is transmitted on a network.

Regarding Claims 28, 38 and 45, Cook in view of Keen teaches concept wherein the communication device receives a confirmation of delivery of the text, and the confirmation of delivery can be received as an e-mail.

Regarding Claims 29 and 46, Cook in view of Keen teaches concept wherein the confirmation of delivery can be received as an e-mail.

Regarding Claims 30, 32 and 40, Cook in view of Keen teaches concept wherein the fee is paid for by a user of the communication device, and the fee is paid to an account of the intermediary facility.

### ***Conclusion***

Applicant is required under 37 CFR '1.111 (c) to consider the references fully when responding to this office action.

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to NARESH VIG whose telephone number is (571)272-6810. The examiner can normally be reached on Mon-Thu 7:00 - 5:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, John Weiss can be reached on (571) 272-6812. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

March 2, 2009

/Naresh Vig/  
Primary Examiner, Art Unit 3629